

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BILL M. OGAN,

Plaintiff,

v.

MATTHEW MILHOLLAND and  
DAVID INCH,

Defendants.

NO. CV-06-317-RHW

**ORDER DENYING PLAINTIFF'S  
MOTIONS FOR A PROTECTIVE  
ORDER**

Before the Court are Plaintiff's Motion for Preliminary Injunction (Ct. Rec. 130), Motions to Protect and Seal Civil Case (Ct. Recs. 134 and 138), and Motion to Strike Defendants' Untimely Response to Plaintiff's Request for Injunctive Relief (Ct. Rec. 148). These motions were heard without oral argument.

Plaintiff filed a handwritten motion (construed as a motion for a preliminary injunction) the day of a telephonic pretrial conference (Ct. Rec. 130). The motion alleges that certain unnamed prison guards are mistreating Plaintiff as a result of the instant litigation, and asks the Court to order Plaintiff's transfer to another facility. On September 11, 2009, Plaintiff filed a similar motion, alleging that "identifiable jailers" continue to harass him about this litigation, but that he fears going into detail because his correspondence will be available to the public, including the prison guards at issue (Ct. Rec. 134). He sought to file under seal documents that will substantiate his allegations "in full detail." On September 24, Plaintiff filed a third motion (Ct. Rec. 138) that was substantially identical to the motion he filed on September 11.

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1 Defendants did not respond to any of these motions. On September 28, 2009,  
2 the Court directed them to do so no later than October 9, 2009 (Ct. Rec. 141). On  
3 October 8, 2009, Defendants filed a memorandum in opposition as well as several  
4 affidavits from personnel at Spokane County Jail with personal knowledge of the  
5 events at issue. Defendants identify and respond to four allegations in detail,  
6 arguing that Plaintiff is not entitled to relief. Plaintiff filed his motion to strike on  
7 October 26, 2009, asking the Court to strike Defendants' response for  
8 untimeliness, and to strike the individual affidavits for "lack of  
9 trustworthiness/credibility" [sic] (Ct. Rec. 148).

10 First, the Court denies Plaintiff's motion to strike because Defendants filed  
11 their response before the deadline the Court set. The Court construes Plaintiff's  
12 second justification for striking the affidavits as an argument about the facts, not a  
13 valid reason to strike.

14 Second, the Court finds that Plaintiff's motions are procedurally improper  
15 and denies them on that basis. Plaintiff alleges no misconduct by the Defendants  
16 actually named in this lawsuit, but rather directs his motions against other  
17 individual jail personnel. Thus, it is unclear whether the Court has jurisdiction to  
18 grant Plaintiff the relief he seeks, even if the Court were to determine relief is  
19 warranted. Moreover, some of the relief Plaintiff seeks (transferring him to another  
20 correctional facility, ordering access to medicine, and protecting him from  
21 harassment by jail employees) is outside the scope of Fed. R. Civ. Pro. 26(c), and  
22 certainly outside the power of the named Defendants.

23 Third, the Court denies Plaintiff's motions on their merits as well. Plaintiff's  
24 motions are difficult to parse because of their jumbled presentation and vague  
25 allusions to "identifiable jailers," but the Court finds that Defendants'  
26 identification of four discrete allegations is a good starting point. Plaintiff's reply is  
27 silent on two of the identified allegations: his housing security classification and  
28 the denial of medicine. Defendants provided Spokane County Jail's "Objective Jail

1 Classification” worksheet, which explains the decision to place Defendant in  
2 maximum security, and Plaintiff does not continue to quarrel with that  
3 classification. Based on that form, it seems that the classification is proper.  
4 Defendants also provided an affidavit from a corrections lieutenant who oversees  
5 the Jail’s medical unit. The lieutenant declares that he investigated Plaintiff’s  
6 requests for medicine, but that Plaintiff refused to execute an Authorization for  
7 Release of Information. Again, Plaintiff does not contest this fact and, accordingly,  
8 the Court considers this claim abandoned.

9 Therefore, it seems that Plaintiff’s claims boil down to two: (1) general  
10 harassment by “identifiable jailers”; and (2) the Jail’s denial of Plaintiff’s access to  
11 legal materials while he was housed in another unit for 72 hours. The Court finds  
12 that the harassment claims are without merit because Plaintiff fails to identify  
13 specific dates, events, or individuals, making his claims impossible to evaluate. As  
14 for the second claim, the Court finds that it is without merit because Plaintiff was  
15 briefly transferred to another unit for good cause, and suffered no harm from being  
16 denied access to his legal materials for three days.

17 Defendants provide an affidavit from corrections Sergeant Hill, who  
18 declares that Plaintiff committed three “major infractions” the day before his  
19 transfer, and was transferred “pending a disciplinary review by classification.”  
20 Plaintiff does not dispute any of the facts reported in Sgt. Hill’s affidavit or  
21 attached report, but argues that the affidavit should be stricken because it conflicts  
22 with Sgt. Foster’s response to Plaintiff’s filed grievance about the transfer. That  
23 response merely states that Plaintiff was moved for “reclassification,” which is  
24 consistent with Hill’s declaration that Plaintiff was transferred “pending a  
25 disciplinary review by classification.” Moreover, Plaintiff does not dispute the fact  
26 that he regained access to his legal materials in 72 hours. With the pretrial  
27 conference still nearly five months away, the Court finds that no prejudice was  
28 caused by this brief denial of access.

1 The final issue before the Court is whether the Court should deny public  
2 access to the filings in this matter to protect Plaintiff from harassment. Because the  
3 Court finds that Plaintiff has failed to support his vague allegations of harassment,  
4 the Court denies this request as well.

5 Finally, the Court notes that in the one-week period since Plaintiff filed his  
6 motion to strike, he sent the Court three letters (Ct. Recs. 152 and 154 and a hand-  
7 written letter dated November 5, 2009, sent directly to chambers) inquiring about  
8 the motion's status. In addition, an unidentified person acting on Plaintiff's behalf  
9 called the Court's chambers to inquire about the motion's status. Plaintiff is  
10 directed not to contact the Court to check on the status of a pending motion unless  
11 he has not received notice of the Court's ruling more than one month past the date  
12 the motion was noted for hearing.

13 Accordingly, **IT IS HEREBY ORDERED:**

14 1. Plaintiff's Motion for Preliminary Injunction (Ct. Rec. 130) is **DENIED**.

15 2. Plaintiff's Motions to Protect and Seal Civil Case (Ct. Recs. 134 and 138)  
16 are **DENIED**.

17 3. Plaintiff's Motion to Strike Defendants' Untimely Response to Plaintiff's  
18 Request for Injunctive Relief (Ct. Rec. 148) is **DENIED**.

19 4. Plaintiff is directed not to contact the Court to check on the status of a  
20 pending motion unless he has not received notice of the Court's ruling more than  
21 one month past the date the motion was noted for hearing.

22 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
23 Order and forward copies to counsel and Plaintiff.

24 **DATED** this 10<sup>th</sup> day of November, 2009.

25  
26 s/Robert H. Whaley  
27 ROBERT H. WHALEY  
United States District Judge

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